Issue III-9 Local Switching

Verizon VA currently provides local switching as a UNE as prescribed by the Commission.[58] If, however, Verizon VA were to begin to offer new "combinations of unbundled loops and transport," also known as EELs, under Rule 319(c)(2), it would not be required to offer local switching as a UNE within Density Zone 1 in the top 50 Metropolitan Statistical Areas (MSAs) for CLECs to serve end-users with four or more voice grade lines.[59]

AT&T asserts that "customer location(s), not its identity, was the primary consideration in the Commission's crafting of the current four line exception."[60] This bold assertion as to Commission intent, however, is belied by the terms of the Commission's *UNE Remand Order*, which allows the exception to be invoked where a customer has four or more lines anywhere "within density zone 1 in the top 50 [MSAs]." It also is inconsistent with AT&T's Petition for Reconsideration of that *Order*. In that Petition, AT&T asked the Commission to

> clarify that ... an end-user should be defined in terms of individual customers at individual addresses .... if a single business customer has multiple locations in an area, each location should also be treated as a separate "end user" for purposes of the rule.[61]

If, as AT&T maintains here, the Commission intended the four line exception to apply only if the four lines were at the same location, it would not need to clarify the *UNE Remand Order* as AT&T has requested. AT&T's Petition for Reconsideration is still pending at the Commission.

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[58] *UNE Remand Order* at ¶ 253.

[59] *Id.* For CLECs to serve those customers, Verizon VA would offer local switching at market rates. Tr. 137-40.

[60] AT&T Br. at 127.

[61] *See* AT&T Corp.'s Petition for Reconsideration and Clarification of the *Third Report and Order, in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, at 17 (filed February 17, 2000).

The Arbitrator has held that in this arbitration the Commission "will not ... reconsider an issue that the commission may have pending before it to reconsider."[62] Thus, the Commission should not reconsider in this arbitration the customer versus location issue.

WorldCom and AT&T argue that for Verizon VA to invoke the switching exception, EELs must be provided on an "unqualified basis,"[63] that is, not subject to the "safe harbor conditions" of the *Supplemental Clarification Order*.[64] This is not the law. The switching exception was announced in the *UNE Remand Order*.[65] Subsequently, the Commission clarified the *UNE Remand Order* to hold specifically that CLECs' conversions of special access to EELs can occur if, but only if, the CLEC certifies that it provides a "significant amount of local exchange service" and meets one of the so-called safe harbor provisions.[66] Nothing in the *Supplemental Clarification Order* finds or even suggests that an ILEC that invokes the switching exception will thereby nullify the Commission's criteria that must be met by a CLEC before it can convert special access to an EEL. The Commission should reject AT&T's and WorldCom's attempt to void the Commission's rule as to special access conversions for any ILEC utilizing the Commission's switching exception.

AT&T objects to Verizon VA's proposal to count a customer's lines throughout the LATA in order to meet the four-voice-lines-or-more trigger to the switching exception.[67]

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[62] Status Conference at 13 (July 10, 2001).

[63] WorldCom Br. at 111.

[64] AT&T Br. at 128-29.

[65] *UNE Remand Order* ¶ 253.

[66] *Supplemental Clarification Order* ¶ 22.

[67] AT&T Br. at 129-30.

Verizon VA agrees that the switching exception applies so long as the customer has four or more voice grade (DSO) equivalents or lines in density zone 1 of the top 50 MSAs.[68]

AT&T requests the Commission to find that the switching exception "pertains solely to 2-wire physical loops" as "opposed to the number of DSOs."[69] There is no restriction in Rule 319(c)(1)(B)(2) that only 2-wire loops be counted toward reaching the threshold for the switching exception and, in fact, just the opposite is true. Rule 319(c)(1)(B)(2) applies the switching exception to "four or more ***voice grade (DSO) equivalents*** or lines..." (emphasis added). Verizon VA Witness Gansert explained that "a DS/O is a standardized, defined industry standard.... It's a 64-kilobit digital channel." Tr. 175. AT&T's tortured interpretation goes against the words of the Rule, as well as the purpose of a threshold capacity requirement to trigger the switching exception. Tr. 174-76.

Next, AT&T argues that even if Verizon VA invokes the switching exception the TELRIC price of local switching UNEs cannot change until "the prices would otherwise be subject to change (in other words, when the interconnection agreement is renegotiated)."[70] AT&T's rationale for its proposed "stable rates" is that "CLECs require a stable business operating environment in order to attract investment capital [and] customers demand this same stable operating environment...."[71] This remarkable position completely nullifies the switching

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[68] AT&T requests a list of the "precise offices where Verizon intends to impose" the switching exception. Verizon VA has stated it has no current intention of invoking the switching exception. Nevertheless, Verizon VA would not object to listing the offices that would qualify under the current rules as there are only two top 50 MSAs in Virginia. Tr. 188-89.

[69] AT&T Br. at 130.

[70] *Id.*

[71] *Id.* at 130-31.

exception because one direct result of the ILEC exercising the switching exception is to move from providing local switching as a UNE at TELRIC pricing to providing local switching at a non-TELRIC approved rate. AT&T's proposal is that the TELRIC rates for local switching in effect on the first day of the new interconnection agreement be frozen for 3 years (the term of the proposed interconnection agreement for all local switching services provided in that first day). This suggestion is so ridiculous that AT&T Witness Pfau concocted a new term, calling the scheme a "quasi grandfathering" of the TELRIC rate. Tr. 187. The Commission must reject this absurd suggestion that is completely unsupported by the Commission's Rule 319(c)(1)(B)(2).

Finally, AT&T wants to be sure that it will not need to "relitigate" the local switching exception "if and when" the Commission lifts or modifies the exception.[72] This is precisely the reason for the change in law provisions in §§ 27 and 4.4 of Verizon VA's proposed contracts with AT&T and WorldCom, respectively. All changes in law will be incorporated into the contracts during the term of the interconnection agreements and there is nothing unique about the local switching exception.

[72] *Id.* AT&T's claim that if any change in the switching exception in its favor should take effect "immediately upon the effectiveness of the Commission rule or order" starkly contrast with AT&T's position that when the switching exception is invoked by Verizon VA it should be required to wait up to ***3 years*** to implement the appropriate rate change.

Issues III-11 Subloops

Issue IV-19 Network Interface Device

1. Verizon VA Proposes Nondiscriminatory Access to its Network Interface Device (NID)[73]

WorldCom objects to Verizon VA's proposal that it be required to access the NID only through a cross connection, through an adjoining CLEC NID, or if an entrance module is available in the Verizon VA NID then directly to that NID.[74] In contrast, AT&T and Verizon VA have agreed to Verizon VA's proposal.[75] In any event, the fact is that Verizon VA grants CLECs access to its NID in full compliance with ¶¶ 392-94 of the *Local Competition Order* and ¶¶ 237 and 240 of the *UNE Remand Order*. Other than the mere mention of ¶ 237 of the *UNE Remand Order*, WorldCom offers no substantive legal response to Verizon VA's proposal. Instead, WorldCom baldly asserts that Verizon VA's approach would be more expensive than WorldCom's unrestrained proposal that it be permitted any connection that is supposedly "technically feasible."[76] Permitting any unspecified type of connection that is supposedly "technically feasible," however, can lead to unfamiliar types of connections that may create maintenance or safety issues as well as exposing Verizon VA employees and its contract employees to uncertain conditions at these demarcation points. Verizon VA Ex. 23 at 16. WorldCom has provided no record evidence on this issue. Consequently, like AT&T and every

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[73] In its explanation of Issue IV-19, WorldCom discusses the issue of whether it should be permitted to work on the network side of the NID. AT&T discusses this issue as part of its Issue III-11. Verizon VA will address this issue under the second sub-heading in this section.

[74] WorldCom Br. at 132; *see* Verizon VA Ex. 23 at 16.

[75] *See* § 11.3 *et seq.* of Verizon VA's proposed AT&T contract; § 11.3 *et seq.* of AT&T's proposed contract.

[76] WorldCom Br. at 131; *see* § 4.7.2 of Attachment III to WorldCom's proposed contract.

other CLEC in Virginia, WorldCom should be required to access Verizon VA's NID in the manner Verizon VA proposes.

2. Verizon VA Provides Non-Discriminatory Access to Multiple Tenant Environments (MTEs) and Multiple Dwelling Units (MDUs)

Verizon VA has implemented reasonable and consistent methods by which CLECs may gain access to MTEs and MDUs and has experienced few problems in coordinating this access. Verizon VA does not own a substantial amount of inside wire in Virginia.[77] Virginia is a minimum point of entry (MPOE) state and the customer typically owns the inside wire on the customer side of the demarcation point.[78] Verizon VA Ex. 1 at 8. Therefore, only the owner or its agent may grant access to CLECs to this inside wire. This arrangement generally is not contentious and usually results in agreements satisfactory to all parties. However, to the extent that Verizon VA owns inside wire, CLECs have full access to the customer side of the telecommunications network pursuant to the Commission's regulations. Tr. 309.

CLECs do not have access to the network side of the demarcation point, however, nor should they. Verizon VA Ex. 23 at 15. Verizon VA cannot reasonably be held accountable for meeting operational performance criteria if it has no control over the persons working on its network. Verizon VA employees are subject to strict training and competency standards and as such should be solely responsible for maintaining Verizon VA's network according to these stringent requirements. Tr. 308. The Petitioners have failed to provide any basis for ignoring Verizon VA's responsibility and liability to assure the operational performance of its system for

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[77] Verizon VA UNE Br. at 44 fn. 51.

[78] There are some limited situations where Verizon VA owns the inside wire in pre-1986 campus-style facilities. In such facilities Verizon VA makes this inside wire available to CLECs wishing to serve customers in those locations. Verizon VA Ex. 15 at 11.

its millions of customers and hundreds of CLECs. Accordingly, their claim that they should have access to the network side of the demarcation point must be rejected.

WorldCom completely misses the point when it erroneously states that "Verizon objects to WorldCom's connection to the customer side of the NID."[79] Verizon VA does not, and will not, restrict access to the ***customer*** side of the network. Verizon VA does not own the wire on that side of the NID and has no rights to contract it away to WorldCom. Accordingly, no language to that effect should be included in the Parties' interconnection agreement. Verizon VA, however, has not conceded that it would be appropriate for CLECs to have access to the network side of the demarcation point. Verizon VA Ex. 23 at 15.

AT&T mischaracterizes Verizon VA's testimony when it broadly states that "Verizon conceded that a CLEC could access the inside wiring itself, without intervention of a Verizon employee."[80] This is a half truth: Verizon VA has testified consistently ("conceded" in AT&T's view) that it will not limit CLEC access to the customer side of the network. The portion of the transcript cited by AT&T--Tr. 304-05--concludes with Verizon VA witness Rousey explaining that in the prescribed hypothetical, no intervention by a Verizon VA employee would be necessary because AT&T "would not be touching Verizon's network side of that network interface device ...."[81]

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[79] WorldCom Br. at 131

[80] AT&T Br. at 134.

[81] AT&T's advocacy also gets ahead of the facts when it states without citation that Verizon VA "acknowledges" that AT&T's working on the network side of the demarcation point has no potential to harm the network. *Id.* at 135. Verizon VA has not "acknowledged" that it is appropriate for other entities to be working on the network side of the demarcation point.

AT&T cites a New York proceeding for the proposition that Verizon VA's insistence on only its employees having access to the network is unreasonable.[82] In New York, however, unlike Virginia, Verizon NY owns the house and riser cables and thus access to the customer side of the demarcation point was also controlled by Verizon NY. Even so, the New York Commission did not disregard Verizon NY's concerns about the integrity and security of its network in that proceeding. Instead, it stated that

> In order to address the general craftsmanship... issues, we will require that any carrier wishing to use house and rise pairs (the using carrier) owned by another carrier (the owning carrier) must first identify itself to the owning carrier and indicate, in writing, that it intends to access directly the owning carrier's house and riser facilities for the purpose of making cross connections. A representative of the using carrier will then be trained by the owning carrier in the standards and practices used by the owning carrier's technicians. The using carrier will then be responsible to train its own technicians in these standards and practices.[83]

The New York Commission clearly was unwilling to grant CLECs the unfettered access to Verizon's network that AT&T requests here. The Commission in this proceeding should not open up Verizon VA's side of the network to other entities that, among other things, may have short term goals of expediency that conflict with long term network security and integrity.

3. All Connections to Verizon VA's Feeder Distribution Interface (FDI) Must Go Through the CLEC Outside Plant Interconnection Cabinet (COPIC)

When discussing subloops and access at the FDI, AT&T again misstates Verizon VA's position when it claims that "Verizon's own witnesses [acknowledge]" that a requirement of

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[82] *See id.* at 134-35.

[83] *In the Matter of Staff's Proposal to Examine the Issues Concerning the Cross-Connection of House and Riser Cables, NYPSC Case No. 00-C-1931*, Order Granting Direct Access Cross-Connections to House and Rise Facilities, Subject to Conditions (June 8, 2001).

collocation at a COPIC is unnecessary.[84] WorldCom also mischaracterizes the record when it states that Verizon VA Rousey acknowledged "that the Commission's regulations do not require that access to subloop be accomplished through an intermediate device."[85] In fact, Verizon VA's witness Gansert stated quite the opposite:

> To directly terminate cable upon [Verizon VA's] FDI rather than have some reasonable administrative and operational interface point established between the two networks... I think it's operationally infeasible from a technical point of view.[86]

Tr. 325. AT&T's opposition to collocation of its equipment into a COPIC ignores the design of the FDI. FDIs "weren't designed to have cables, multiple cables attached to them." Tr. 324. Therefore, "from a perspective of being able to feasibly add cables on request and sustain normal operation or quality operation... it's not technically feasible." *Id.* Furthermore, Verizon VA requires a COPIC for reasons similar to that of a NID: to protect the integrity of its network. By ensuring that all connections to its FDI go through one centralized connection point, Verizon VA can protect the integrity and quality of its network for its customers and requesting carriers. Tr. 308-09; 327. WorldCom's complaints of "significant unnecessary costs" and "administrative problems" are unsupported by the record. In any event, these kinds of speculative and unsupported claims do not outweigh the substantial evidence here that a COPIC is required for both technical and network integrity reasons.

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[84] AT&T Br. at 136.

[85] WorldCom Br. at 116. In fact, Mr. Rousey only testified that he was "unaware" of Commission regulations requiring that access be accomplished only through an intermediate device. Tr. 365-66. Nevertheless, WorldCom can point to no legal authority prohibiting Verizon VA's proposed methods of access.

[86] The "reasonable administrative and operational interface point" to which Witness Gansert refers is the COPIC which is nothing more than a small cross connection point. Tr. 326-327.

4. The Parties' Contract Should Incorporate by Reference the Actual Language of the Rules Rather than Attempt to Paraphrase Numerous Commission Rules.

Finally, WorldCom's attempt to "paraphrase" existing FCC rules on access to subloops in its proposed contract is unacceptable.[87] As Verizon VA proposes, the interconnection agreement should [88] incorporate by reference ***the actual language of the rules***. WorldCom claims its language is "almost identical" to the rules.[89] "Almost identical," however, means that WorldCom's language is ***different*** than the rule, and to the extent WorldCom's language is different, WorldCom is attempting to impose obligations ***different*** from those imposed by the Commission rules. There can be only two reasons for this proposal: 1) WorldCom ***intends*** to impose different obligations (without explaining them); or 2) if the rules change, WorldCom wants to preserve an argument that Verizon VA is contractually bound to WorldCom's paraphrase of the old rule, notwithstanding that the rule has changed. Neither reason is legitimate. Nor is there any basis for WorldCom's assertion that Verizon VA's proposal to reference applicable law is somehow "ambiguous."[90] The interconnection agreements will contain numerous references to "applicable law," and there is no basis to claim that a similar reference here will create any ambiguity. The most effective method of adopting existing law

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[87] As noted in WorldCom's Brief, it attempts to "paraphrase" four different Commission rules. WorldCom Br. at 114. Naturally, this begs the question what portions of the Commission's rules were excluded in WorldCom's paraphrasing? Even WorldCom qualifies that its language is ***virtually*** identical to the Commission's rules.

[88] *Id.* at 114.

[89] *Id.* at 115.

[90] *Id.* at 116; *see* Network Elements Attachment §§ 5, 6, 8 of Verizon VA's proposed WorldCom contract.

into the interconnection agreement is to incorporate it by reference as Verizon VA has proposed.[91]

[91] *See* Network Elements Attachment § 1.1 of Verizon VA's proposed WorldCom contract.

Issue III-12 Dark Fiber

As Verizon VA explained in its opening brief, Verizon VA provides dark fiber in a manner that complies with the Act and the Commission's Rules. In their briefs, AT&T and WorldCom argue that they are entitled to much more, but their arguments virtually ignore the Commission's rules, and should be rejected.

One of the primary issues between the Parties concerns how and where the Petitioners obtain access to dark fiber. AT&T asserts that it is entitled to access dark fiber at splice points.[92] Even WorldCom recognizes AT&T is wrong; its brief acknowledges that Commission Rule 319(a)(2) "prohibits removing a splice case to reach the fiber."[93] Incredibly, however, WorldCom argues that "establishing a new splice to access dark fiber, at a point where the splice can be done without removing a pre-existing splice case, is not prohibited."[94] WorldCom seems to believe that while it cannot open an existing splice case, it can construct a new one right beside it or at any other point on the loop. That is an absurd reading of Rule 319(a)(2).

Rule 319(a)(2) defines the subloop network element as "any portion of the loop that is technically feasible to access at ***terminals*** in the incumbent LEC's outside plant."[95] A splice point, of course, is not a terminal, and the rule therefore does not allow access at any splice point, ***whether it is existing or new***. Indeed, the Commission's discussion of this rule in the *UNE Remand Order* makes this very clear. The Commission first explained that "[a]n accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable

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[92] AT&T Br. at 138.

[93] WorldCom Br. at 121.

[94] *Id.*

[95] Rule 319(a)(2) (emphasis added).

without removing a splice case to reach the wire or fiber within."[96] The Commission then elaborated in a footnote:

> Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point. ***Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.***[97]

WorldCom's argument--that while the rule prohibits breaching a splice case, it does not prohibit breaching the fiber itself--is simply untenable.[98]

The evidence also demonstrates why splice points are not accessible terminals and why accessing dark fiber at splice points is technically infeasible because of the danger to the operational integrity of the network. As Verizon VA witness Detch explained, "repeatedly opening splice cases to provide access to individual fibers threatens the integrity of Verizon

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[96] *UNE Remand Order* at ¶ 206; *see also*, Rule 51.319(a)(2).

[97] *Id.* at n.395 (emphasis added).

[98] The *UNE Remand Order* lists a number of accessible terminals, but that list does not include a splice point, or anything like it. The list includes

> a technically feasible point near the customer premises, such as the pole or pedestal, the NID ..., or the minimum point of entry to the customer premises (MPOE). Another point of access would be the feeder distribution interface (FDI), which is where the trunk line, or "feeder," leading back to the central office, and the "distribution" plant, branching out to the subscribers, meet, and "interface." The FDI might be located in the utility room in a multi-dwelling unit, in a remote terminal, or in a controlled environment vault (CEV). We acknowledge that some FDIs are more accessible than others; utility rooms are generally more spacious than vaults. A third point of access is, of course, the main distribution frame in the incumbent's central office.

UNE Remand Order at ¶ 206.

VA's physical network, negatively affects the transmission capabilities of its fiber optic facilities, and poses operational risk to other services riding the fiber ribbon or cable."[99] Similarly, at the hearing, Verizon VA Witness Gansert explained that "[o]ne doesn't plan and build fiber with the idea of going back and re-opening splices and touching them. To the contrary, one builds with the intent that you won't ever have to go back." Tr. 374. Creating new splices is even worse. As Mr. Gansert explained: "You try to avoid splicing fiber when you can. It's not a very good thing to do." Tr. 377. In short, splice points are not, and were not designed to be, accessible points for interconnection. Tr. 379.[100]

The New Jersey Board of Public Utilities recently rejected the positions advanced by the Petitioners in this case and approved its Staff's recommendation that "splicing into dark fiber is an inefficient and wasteful use of these valued facilities."[101]

WorldCom argues that because "Verizon VA routinely performs splices of fiber in its own network," CLECs should be allowed to do the same, "particularly if CLECs are to have non-discriminatory access to dark fiber."[102] AT&T appears to make a similar argument.[103] This

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[99] Verizon VA Ex. 1 at 20-21.

[100] In support of its position, AT&T relies on a decision of the Massachusetts Department of Telecommunications and Energy to require access at existing splice points. AT&T Brief at 140. That requirement, however, was imposed before the Commission adopted Rule 319(a)(2). Tr. 528. The Massachusetts order was issued December 13, 1999; the Commission's rule became effective May 17, 2000. That requirement cannot be adopted here because Rule 319(a)(2) now makes it clear that a splice point is not an accessible terminal. Moreover, no carrier in Massachusetts has ever tried to access dark fiber at a splice point, so it has not been demonstrated that such access is technically feasible. *Id.*

[101] Board Meeting, Docket No. TO0060356, *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.* at 28-29 (Nov. 20, 2001).

[102] WorldCom Br. at 121-22.

argument is specious.[104] Although CLECs must be allowed ***access*** to Verizon VA's network, that does not mean Verizon VA must perform construction activities to allow such access. CLECs are entitled to access Verizon VA's dark fiber, but they may only do so at ***accessible terminals***. The Petitioners' arguments to the contrary conflict squarely with the Commission's rules and must be rejected.[105]

AT&T complains that Verizon VA "defines dark fiber as only that fiber that is continuous (*i.e.* not spliced) between two central offices or between a [central office] and a customer premises."[106] The *UNE Remand Order,* however, specifically defines dark fiber as "deployed, unlit fiber optic cable that ***connects two points*** within the incumbent's network."[107] Similarly, dark fiber is "unused loop capacity that ***is physically connected to facilities*** that the incumbent LEC currently uses to provide service, was installed to handle increased capacity, and

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[103] AT&T Br. at 139-40.

[104] The suggestion that Verizon VA "performs new splices for itself without disturbing existing splices" is misleading. WorldCom Br. at 124; *see also* AT&T Br. at 139-40. As Mr. Gansert explained at the hearing, if Verizon VA knows that it will need a splice in the future, it plans for it at the time of the original installation so that the splice does not have to be re-opened, or a new one made. Tr. 406.

[105] Verizon VA objects to WorldCom's proposed use of the WorldCom-BellSouth contract language. WorldCom Ex. 13 at 16-19. This language continues to be at odds with the applicable law. For example, WorldCom requests access to dark fiber at splice points in §§ 6.2.5 and 6.3.2, and requests access to "unused transmission media," which goes beyond the Commission's definition of dark fiber as a UNE, in § 6.4 Verizon VA also objects to the requirements of §§ 6.2.4 and 6.3.1 regarding the testing of the adequacy of dark fiber, which should be provided at parity with the field survey practices Verizon VA uses to determine the status of dark fiber when it needs access to it.

[106] AT&T Br. at 139.

[107] *UNE Remand Order* at ¶ 325 (emphasis added).

can be used by competitive LECs without installation by the incumbent."[108] Accordingly, fiber that must be spliced together to create new routes, or terminated onto Verizon VA's network, does not meet the definition of dark fiber, and Verizon VA cannot be forced to install it for the CLECs.[109] Nor is there any merit to the suggestion that Verizon VA should be required to connect two dark fibers at an intermediate office. As Verizon VA explained in its opening brief, this suggestion was recently rejected by the New York Public Service Commission because it went beyond the Commission's rules.[110]

AT&T also claims that Verizon VA should be required to "upgrade electronics if that would resolve the impediment to AT&T's access to dark fiber."[111] This claim flatly ignores Commission Rule 319(d)(1)(ii), which defines dark fiber "as incumbent LEC optical transmission facilities ***without attached multiplexing, aggregation or other electronics***."[112] Because, by definition, no electronics of any kind are attached to dark fiber, there can be no

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[108] *Id.* at ¶ 174, n.323 (emphasis added).

[109] Indeed, the Commission only decided to require the unbundling of dark fiber because it "is already installed and easily called into service." *UNE Remand Order* at ¶ 325.

[110] *See* Verizon VA UNE Br. at 57.

[111] AT&T Br. at 141.

[112] 47 C.F.R. 51.319(d)(1)(ii) (emphasis added). *See also UNE Remand Order* at ¶ 325 ("dark or 'unlit' fiber, unlike 'lit' fiber, ***does not have electronics*** on either end of the dark fiber segment to energize it to transmit a telecommunications service. Thus, dark fiber is fiber which has not been activated through connection to the electronics that 'light' it and render it capable of carrying telecommunications services.") (emphasis added); *id.* at ¶ 174 (Dark fiber is fiber that has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying communications services.)

argument that Verizon VA should upgrade any electronics.[113] Instead, as the Commission held, "[t]he [carrier] leasing the fiber is expected to put its own electronics and signals on the fiber and make it 'light.'"[114]

The Petitioners complain about several other aspects of Verizon VA's provision of dark fiber, but none of their complaints have merit. WorldCom complains about the requirement to collocate in order to access dark fiber, though it does not explain how it will attach the electronics to the dark fiber if it does not collocate.[115] The Commission should reject WorldCom's argument, just as the New York Public Service Commission rejected it.[116] In so doing, the New York PSC held that "[f]or a CLEC to use dark fiber, it must collocate and provide the electronics; Verizon then implements the cross connections necessary to connect the dark fiber."[117]

AT&T asserts that it should be able to reserve dark fiber and complains about Verizon VA's field survey policy.[118] As Verizon VA explained in its opening brief, Verizon VA does not reserve dark fiber for itself, and there is no basis to allow CLECs to do so.[119] Verizon VA also

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[113] For the same reason, AT&T is wrong in claiming that it should be entitled to access dark fiber "at the regenerator or optical amplifier equipment." AT&T Br. at 138. Because dark fiber does not include such equipment by definition, it cannot be accessed at that equipment.

[114] *UNE Remand Order* at ¶ 162, n.292.

[115] WorldCom Br. at 123.

[116] *Re Digital Subscriber Line Services*, Opinion No. 00-12, Case No. 00-C-0127, 2000 N.Y. PUC LEXIS 866 (N.Y.P.S.C. October 31, 2000).

[117] *Id.*

[118] AT&T Br. at 140.

[119] Verizon VA UNE Br. at 58.

explained that the field survey is neither burdensome nor mandatory, but the same process Verizon VA itself uses.[120]

Finally, as Verizon VA has explained,[121] there is no basis to adopt AT&T's vague term of "unused transmission media" in lieu of the term "dark fiber." The Commission has required the unbundling of dark fiber, which it has defined as "***unlit fiber optic cable***...";[122] it has not required the unbundling of "unused transmission media."[123] AT&T's attempt to use a different term is nothing more than an attempt to expand or change existing law, and that should not be permitted in this arbitration.[124]

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[120] *Id.* at 59-60.

[121] *Id.* at 62.

[122] *See UNE Remand Order* ¶ 325 (emphasis added).

[123] AT&T Ex. 5 at 6.

[124] Status Conference at 26 (July 10, 2001).

Issue IV-14 Applicable Law

Issue IV-15 Applicable Law

Issue VI-1(E) Changes in Law

WorldCom disagrees with Verizon VA's proposal to implement changes in applicable law within 45 days of notice from Verizon VA to each CLEC. This process could apply when the law changes so that Verizon VA is no longer required to provide a UNE, but only if the order changing the law does not clearly specify when the change in law takes effect. If the order is silent on the issue, Verizon VA's proposal is simply intended to ensure that CLECs cannot unreasonably delay the implementation of the new law.

WorldCom makes two arguments: Verizon VA's proposal for a standardized implementation schedule is "anti-competitive" and, even if a standardized timetable to implement a change in law is appropriate, 45 days is "unreasonably short."[125] Verizon VA's proposal will not be "anti-competitive" because it will utilize an open, predictable and non-discriminatory process. WorldCom's suggestion that Verizon VA "gives itself the right to terminate services unilaterally and without limitation"[126] is simply incorrect. Under Verizon VA's proposal, WorldCom will have 45 days to petition the Commission (or the Virginia Commission) if it disagrees with any aspect of Verizon VA's implementation of the change in applicable law. Tr. 673; *see* Verizon VA Ex. 13 at 47-49.

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[125] WorldCom Br. at 152-53.

[126] *Id.* at 153.

Similarly, there is no merit to WorldCom's complaint that the 45-day period is "unreasonably short."[127] All WorldCom will have to do within this 45-day period is take the issue to the Virginia Commission or this Commission.

Instead, WorldCom's real purpose is to prevent the change in law from taking effect for as long as possible. According to WorldCom, Verizon VA should be prohibited from taking action until after any appeal or reconsideration is resolved, followed by an additional "transitional" period.[128] WorldCom should not be permitted to insert language that would give it a contractual right to delay implementing changes in law, notwithstanding what the law might say. This is particularly important given the CLECs' recent attempts to delay in any manner possible the implementation of the *ISP Remand Order*. Instead, if WorldCom disagrees with any action Verizon VA proposes, it should let this Commission or the Virginia Commission decide such questions as whether a transitional period is required, and, if so, how long it should be. Verizon VA's proposal is designed to accomplish that objective, and it simply ensures that the process starts within 45 days.

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[127] *Id.* at 154.

[128] *Id.* at 153.

Issue IV-18 Multiplexing

Issue IV-21 Dedicated Transport

WorldCom demands, at UNE rates, the termination of dedicated transport (interoffice transmission) into a multiplexer in Verizon VA's wire center for purposes of aggregating the existing signals onto a higher bandwidth facility and disaggregating the signal into lower bandwidth (demultiplexing). WorldCom Ex. 12 at 8-10. WorldCom has masqueraded this request as one for multiplexing as a "feature, function, or capability" of dedicated transport, but it is not.[129] WorldCom demands multiplexing ***at the termination*** of dedicated transport for WorldCom's use in further transmission, in contrast to Verizon VA's provision of "multiplexing in the middle" of dedicated transmission facilities. Verizon VA Ex. 8 at 3-6; Verizon VA Ex. 23 at 5 n.3. Multiplexing has not been defined by the Commission as a UNE and Verizon VA is not obligated to provide multiplexing equipment to CLECs at UNE rates for CLECs to terminate dedicated transport.[130]

As set forth in Verizon VA's opening brief, multiplexing refers to the aggregation or disaggregation of signals for transmission over a transport facility, effectively providing a cost-effective method for transmitting lower capacity circuits using a higher bandwidth facility.[131] Verizon VA's obligation to provide dedicated transport, however, does not include termination into a multiplexer in Verizon VA's wire center. For example, when WorldCom buys dedicated

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[129] WorldCom Br. at 133.

[130] *See UNE Remand Order* Executive Summary. Multiplexing is not on the list of designated UNEs. Verizon VA does, however, voluntarily offer CLECs two types of stand-alone multiplexing: DS3 to DS1 and DS1 to DS0. Verizon VA Ex. 23 at 5-6.

[131] Verizon VA UNE Br. at 75. This definition is consistent with the Commission's definition of multiplexing as being "used to derive the loop transmission capacity." *UNE Remand Order* at ¶ 175.

transport at a DS-1 transmission level as a UNE, Verizon VA transmits that traffic within its network multiplexing as necessary to achieve efficient transmission and terminates that transmission at WorldCom's collocation facilities at a DS-1 level as ordered. Tr. 407-16. That ends the dedicated transport. WorldCom seeks a further service whereby Verizon VA would, following delivery of the transmission as ordered at the DS-1 level, multiplex the DS-1 "signal" into a DS-3 "signal." Tr. 411. This additional service is offered by Verizon VA voluntarily but it is not a function, feature or capability of the completed dedicated transport, and it is not offered as a UNE. Tr. 407-16.[132]

WorldCom also requests that Verizon VA perform special construction and build new transport facilities when WorldCom desires physical diversity in connection with the use of dedicated transport for a particular customer.[133] Verizon VA is under no obligation to provide special construction services to WorldCom. The Eighth Circuit clarified that Verizon VA must provide a CLEC with access to its existing network, but not to an unbuilt superior network.[134] The Commission expressly has agreed with this network limitation as to dedicated transport:

> ... we do not require incumbent LECs to construct new transport facilities to meet specific competitive point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.[135]

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[132] Similar to multiplexing, DCS has not been defined by the Commission as a stand alone UNE.[132] Consequently, the functionality of DCS is not provided to IXCs on an unbundled basis. *See* Verizon VA UNE Br. at 77-79.

[133] WorldCom Br. at 137-38.

[134] *Iowa Utilities I*, 120 F.3d at 813.

[135] *UNE Remand Order* at ¶ 324.

Verizon VA simply does not guarantee diversity as a part of its regular operations, and there is no obligation on Verizon VA to construct new facilities for WorldCom. Tr. at 516-17.

Issue IV-23 Line Information Database ("LIDB")

This issue involves WorldCom's attempt to deprive Verizon VA of access tariff rates it is entitled to receive from WorldCom's IXC affiliate for LIDB queries, or "dips." The scheme WorldCom has recently developed to accomplish this unlawful purpose involves misreporting its affiliated interexchange carrier's exchange access LIDB dips by using WorldCom's CLEC point code, and then asserting the right to pay for those LIDB dips for toll calls as if they had been initiated by the CLEC's customers for local calls. Verizon VA Ex. 62, Attachments 62A and B. It should be noted, however, that the Parties are negotiating an interconnection agreement between Verizon VA and MCImetro Access Transmission Services of Virginia, Inc., *i.e.*, the WorldCom CLEC affiliate, not the WorldCom IXC affiliate. The WorldCom IXC affiliate is not a party to this agreement, and is not entitled to purchase services pursuant to the agreement. WorldCom's scheme ignores this distinction, and is therefore improper and contrary to applicable law, and should be rejected.

WorldCom's description of this issue suggests that Verizon VA is attempting to "restrict WorldCom's right to use the LIDB UNE to local calls."[136] That is not accurate. The dispute is not whether WorldCom the CLEC or WorldCom the IXC can use the LIDB; both entities can process LIDB queries. Instead, the dispute is over what rate the respective carriers should pay for those queries.

WorldCom asserts that the scheme it has devised to allow its long distance affiliate to circumvent the access charges that would otherwise apply is permitted by ¶ 356 of the *Local Competition Order,* which says that § 251(c)(3) of the Act permits interexchange carriers "to purchase unbundled elements for the purpose of offering exchange access services, or for the

[136] WorldCom Br. at 141.

purpose of providing exchange access services to themselves in order to provide interexchange services to consumers."[137] WorldCom also relies on ¶ 359 of the *Local Competition Order* for the proposition that ILECs may not impose limitations on the ability of carriers to use unbundled network elements.[138]

There are two flaws in WorldCom's argument. First, the WorldCom interexchange carrier affiliate is not a party to this proceeding, will not be a party to the interconnection agreement that results from this proceeding, and will not be able to purchase any services from Verizon VA pursuant to that agreement. On the contrary, it is no different than any other interexchange carrier that uses Verizon's access services. Second, WorldCom reads the *Local Competition Order* selectively and ignores the language at the end of ¶ 358. There, in discussing the interplay between access services and unbundled elements, the Commission observed:

> When states set prices for unbundled elements, they will be setting prices for ***a different product*** than "interstate exchange access services." ***Our exchange access rules remain in effect and will still apply where incumbent LECs retain local customers*** and continue to offer exchange access services to interexchange carriers who do not purchase unbundled elements, and also where new entrants resell local service.[139]

Thus, the exchange access LIDB rate remains in effect and still applies because Verizon VA retains local customers and continues to offer LIDB services to interexchange carriers who do not purchase unbundled elements and who operate in a market that is distinct from the local exchange market. Those interexchange carriers, like WorldCom's IXC, may use LIDB under the access tariff to provide toll calls to a variety of customers, including local customers of Verizon

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[137] *Id.*

[138] *Id.* at 142.

[139] *Local Competition Order* at ¶ 358 (emphasis added).

VA. WorldCom's scheme ignores the fact that access to the LIDB under the access tariff is a different product than the LIDB UNE. It is therefore not entitled to pay for them as if they were the same.

As Verizon VA explained in its opening brief, under § 251(g) of the Act, Verizon VA's access tariffs continue to apply until "explicitly superseded by regulations prescribed by the Commission." 47 U.S.C. § 251(g). Because the Commission has never held that Verizon VA's LIDB access tariff has been superseded, it continues to apply.

WorldCom also tries to support its position by arguing that Verizon VA's proposal would violate the Act's requirement to provide "nondiscriminatory access to network elements on an unbundled basis."[140] In a curious argument, however, WorldCom actually affirms Verizon VA's position. WorldCom states:

> Verizon allows interexchange carriers to use LIDB in connection with toll calls, and Verizon uses LIDB to offer the LIDB functionality to IXCs as a service in its access tariff. Since Verizon offers this service to IXCs, the Act's nondiscrimination provisions requires [sic] Verizon to provide WorldCom with the same opportunity to access the LIDB network element in order to provide exchange access service.[141]

Verizon VA agrees that access to Verizon VA's LIDB must be provided in a non-discriminatory manner. For toll calls, WorldCom should access the LIDB in the same manner as other IXCs do--and pay the applicable access tariff rate. WorldCom, however, wants the Commission to approve its scheme that would discriminate in WorldCom's favor to the disadvantage of IXCs who abide by the applicable law and have no affiliated CLEC through which to perpetrate WorldCom's scheme.

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[140] WorldCom Br. at 142.

[141] *Id.* at 141.

WorldCom notes that the Parties current agreement "does not contain the restrictions that Verizon is now attempting to impose."[142] WorldCom, however, only recently began to claim that the current agreement would permit it to "game" the system by misreporting the nature of its IXC affiliate's LIDB queries for toll calls.[143] Prior to that time, WorldCom's own conduct makes clear that it interpreted and applied the agreement (and the governing legal requirements) in the same way as Verizon VA. That is precisely why the existing language should now be changed to prohibit WorldCom's LIDB billing scheme that was not contemplated, by either party, at the time they entered into the current agreement.

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[142] *Id.*

[143] *See* Attachment 1 to Verizon VA's UNE Brief (Attachments 62A and B to Verizon VA Ex. 62).

Issue IV-24 Directory Assistance Database

Sensing the weakness of its original proposal, WorldCom has reverted to its fallback position of renewing the language in the Parties' existing agreement so as to extend the Directory Assistance License Agreement ("DAL agreement") between the parties.[144] The proposal, however, is nothing more than an attempt to extend the terms and conditions in the DAL beyond the time to which the Parties agreed.[145] Such a term extension would effectively override provisions of the existing DAL. In a footnote, WorldCom claims that it "does not seek in this arbitration to alter the terms of the DAL Agreement. All WorldCom seeks is a means to insure that it continues to receive the DA database after the DAL Agreement expires."[146] This claim is unequivocally false. The term of the Agreement is obviously a condition under which Verizon VA provides WorldCom with access to its DA database. Moreover, WorldCom agreed in the DAL that it would not "file any ... arbitrations ... regarding [Verizon VA's] provision of directory assistance data to MCI and others" as long as Verizon VA complied with the DAL, and there is no question that Verizon VA is complying.[147] WorldCom's raising this issue in this arbitration, therefore, is a breach of the DAL. WorldCom may feel free to ignore its contractual commitments, but the Commission should respond to its bad faith by rejecting its position. The Commission should honor the Parties' Settlement Agreement that prohibits consideration of

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[144] WorldCom Br. at 145.

[145] *Id.* at 144.

[146] *Id.* at 144 n.91. WorldCom postulates without record support that "[t]he DAL Agreement will likely expire by November 30, 2004." As Verizon VA explained in its opening brief, that will not happen unless WorldCom intends to terminate the DAL, but WorldCom is here seeking to extend it. Accordingly, there is no basis for WorldCom's position.

[147] Verizon VA Ex. 8 at 12.

directory assistance database issues in this proceeding and should not order any provisions in the interconnection agreement that specify what arrangements should follow a termination of the DAL.[148]

[148] WorldCom continues to insist that the Commission "specifically affirm that the DA database remains" a UNE. WorldCom Br. at 144. Whether the DA database is a UNE, which it is not for the reasons described in Verizon VA's UNE Br. at 93-95, is completely irrelevant to the issue of whether the terms of the Parties' DAL apply and, in any event, WorldCom is contractually prohibited from raising the question.